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No. 408

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

MATHIAS WALKER, JR., JOHN E. MOORE, JR., RALPH VAN CURE, a Minor By MARGUERITE VAN CURE, His Mother and Next Friend,

Petitioners,

vs.

FOREST PRESERVE DISTRICT OF COOK COUNTY, ILLINOIS,

Respondent

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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The Schaffer Press, Inc.—ANdover 3-6850

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PETITIONERS' PETITION FOR REHEARING

Petitioners, on the grounds following, petition for rehearing of this Court's denial of Petition for Writ of Certiorari to the Supreme Court of Illinois.

I. PETITIONERS HAVE SUBSTANTIAL GROUNDS AVAILABLE TO PETITIONERS NOT PREVIOUSLY PRESENTED.

The onset and course of petitioners' causes of action through the labyrinth of the civil procedural system in Cook County and the State of Illinois for right to an early trial, in effect in the jurisdiction at the time these causes of action were winding their way to an ultimate decision, must be considered in the light of the record herein. The injuries occurred in 1950, 1957 and 1958, and actions alleg-

ing negligence were brought in 1956 and 1959 in the Superior Court of Cook County. The controlling *Molitor* decision action occurred on March 10, 1958, and occurred in another county and was appealed from the Circuit Court of that County.

The Trial Court held up the Petition for Advancement of the *Walker* cause of action awaiting the decision of the Supreme Court in the *Molitor* case. Verification of this statement can be found in respondent's Brief in the Illinois Supreme Court, on page 14, and set forth below:

> "During the many pre-trial conferences conducted after plaintiff's motion of June 17, 1958 for the purpose of determining the issue of advancement of this case for trial, both plaintiff and defendant and Judge Harold Ward became aware of the case of *Molitor* v. *Kaneland Community District No. 302* then pending in the Appellate Court and subsequently in this court and that the defendant, The Forest Preserve District participated as *amicus curiae* in a petition for a rehearing in that case in this court. Judge Harold Ward withheld his decision on advancement and continued plaintiff's petition from time to time pending the final decision in *Molitor*. This final decision was rendered in *Molitor* on December 19, 1959 and it was followed by a petition for leave to intervene and for a clarification of the opinion in this court, which was thereafter denied. Certiorari was then taken to the United States Supreme Court and also denied."

The final decision in the Second Molitor case in the *Molitor* v. *Kaneland Community District No. 302*, was rendered May 23, 1962; nevertheless plaintiffs' causes of action were dismissed in the Trial Court on September 27, 1961, and petitioners were denied the benefit of the intent of the language of the Illinois Supreme Court, where it is set forth:

> "We are dealing here only with claims which, as clearly appears from the record now before us the parties contemplated would be adjudicated in accordance with disposition of the claim of Thomas Molitor." (*Molitor* v. *Kaneland Unit No. 302*, 24 Ill. 2d 467.)

Thus, because these petitioners relied on a test case, where the respondent filed *amicus curiae* briefs, they were dismissed before final decision by the Trial Court on the basis of the first opinion and then denied relief by the State Supreme Court who, by its final decision, give a certain class of citizens relief who had instituted an appeal and denied the same to petitioners. This is not equal protection of the law under the constitution.

Apparently, this Court adopts the argument of the respondent that petitioners are not in the same class as the School District cases. This argument is misleading and belies the record. Respondent as amicus curiae in the *Molitor* case was an advocate and argued otherwise.*

Until the petitioners had exhausted their remedies in the backlog of the State Courts, being denied due process and equal protection of law while they pursued their causes of action and held in statis quo while amicus curiae briefs were filed, other citizens were granted an expeditious hearing on the question involved.

It is respondent's position in its Reply Brief to the original Petition herein, that the Illinois Supreme Court had a right to include other litigants in their final decision by its statement on page 6, as follows:

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* S. Krislov, Amicus Curiae Brief: from friendship to advocacy, 72 Yale Law Journal, p. 694 [March '63].

"When it came to the Supreme Court's attention that the appeal prosecuted on behalf of *Thomas Molitor* had been regarded by the court below as well as the parties to all actions arising out of that particular occurrence as representative of the rights of all the parties the Court included them within its application of the rule abolishing governmental immunity.

> 'To expedite review and minimize expense, the trial court suggested 'going up on a short record at an early date on the sole question of whether the Complaint states a good cause of action.' and that this would provide 'the basis for determining the future course of the parties to this case as well as other Claimants.' The count on behalf of *Thomas Molitor*, whose name was selected arbitrarily for the appeal, was dismissed.' *Norma Molitor, et al* v. *Kaneland Community Dist. No. 302*, 24 Ill. 2d 467, 468 (March, 1962).

"This action on the part of the Supreme Court of Illinois was reasonable in the light of the foregoing authorities and therefore was justified on State grounds."

The sole question to decide now is whether due process or equal protection has been violated. The injuries sustained by the petitioners depleted them of all financial status and while they were held in status quo on the prosecution of their lawsuit and relying on the abolition of the governmental immunity doctrine to include them, the Illinois Supreme Court denied these petitioners relief, rewarding those who tested the law by appeal.

As the court said in *Griffin* v. *Illinois*, 351 U.S. 12, page 18:

> "* * * Indeed, a provision in the Constitution of Illinois of 1818 provided that every person in Illinois 'ought to obtain right and justice freely, and without

being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.'

"There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance."

Petitioners raised the constitutional violations of the right to a prompt trial, due process, and violation of equal protection from the outset and the probability that denial of petitioners' constitutional rights is so great that this court should grant certiorari on that issue as is.

Respectfully submitted,

MARY M. SHAW,
Attorney for Petitioners.

PHILIP E. RYAN,
of Counsel.

CERTIFICATE

The foregoing petition for rehearing is believed to be meritorious and is presented in good faith and not for delay and is restricted to the grounds above specified.

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MARY M. SHAW,
Attorney for Petitioners.

PHILIP E. RYAN,
of Counsel.